

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-CV-00763
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., et al.,)	
)	
Defendants.)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant Sysco Food Services of Central Alabama, Inc. (“Sysco”), pursuant to Fed. R. Civ. P. 56, hereby moves this Court to enter summary judgment in its favor on Plaintiff’s age discrimination claim. In support of this motion, Sysco states as follows:

Plaintiff asserts the following claims in Count Three of his complaint: Alabama Age Discrimination in Employment and Federal Age Discrimination in Employment.¹ Sysco is entitled to summary judgment on Plaintiff’s age claims,

¹ Plaintiff’s complaint contains two additional counts, but Counts One and Two of the Plaintiff’s Complaint are brought under the Alabama Workers’ Compensation Act and have been remanded to the State court. This motion for summary judgment addresses Count Three of the Plaintiff’s Complaint, which is the only count pending in this Court.

because there is not genuine issue of fact and Sysco is entitled to judgment as a matter of law.

In support of its motion, Sysco relies on Defendant's Memorandum in Support of its Motion for Summary Judgment, Defendant's Evidentiary Submission in Support of Motion for Summary Judgment, filed contemporaneously herewith, the pleadings on file in this matter, and any argument which may be presented at oral argument of this motion.

Wherefore, Sysco respectfully requests the Court to grant its Motion for Summary Judgment and dismiss all remaining claims pending before the Court with prejudice.

s/William D. Smith, Jr.
Arnold W. Umbach III (UMB002)
William D. Smith, Jr. (SMI204)
Attorneys for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512
(205) 868-6000
(205) 868-6099 Facsimile
tumbach@starneslaw.com
wsmith@starneslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Davis L. Middlemas, Esq.
1740 Oxmoor Road, Suite 210
Birmingham, AL 35209

Donald B. Kirkpatrick II
Carr, Allison, Pugh, Howard, Oliver & Sisson, P.C.
100 Vestavia Parkway, Suite 200
Birmingham, Alabama 35216

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/William D. Smith, Jr.
Arnold W. Umbach III (UMB002)
William D. Smith, Jr. (SMI204)
Attorneys for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512
(205) 868-6000
(205) 868-6099 Facsimile
tumbach@starneslaw.com
wsmith@starneslaw.com